



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 21, 2004

Ms. Valecia R. Tizeno  
Assistant City Attorney  
City of Port Arthur  
P.O. Box 1089  
Port Arthur, Texas 77641-1089

OR2004-8054

Dear Ms. Tizeno:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209453.

The City of Port Arthur (the "city") received a request for the offense report and officers' statements in a specified case, as well as all other information pertaining to the case not already provided to the requestor. You state that you have provided the requestor with some of the requested information. You claim, however, that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered correspondence submitted to this office by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

Initially, we address your assertion that the request for "all other information pertaining to the case [not already provided to the requestor]" lacks specificity. You state that the city is unsure what category of information is being sought. Section 552.222 of the Government Code provides:

If what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request. If a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed, but the governmental body may not inquire into the purpose for which information will be used.

Gov't Code § 552.222(b). However, a request for records made pursuant to the Public Information Act (the "Act") may not be disregarded simply because a requestor does not specify the exact documents the requestor desires. Open Records Decision No. 87 (1975). Numerous opinions of this office have addressed situations in which a governmental body has received an "overbroad" written request for information. In response to the request at issue here, the city must make a good-faith effort to relate the request to information in the city's possession and must help the requestor to clarify her request by advising her of the types of information available. We note that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Gov't Code § 552.222(b); *see also* Open Records Decision No. 561 at 8 (1990).

We note that the submitted information is subject to section 552.101 of the Government Code in conjunction with the common-law right to privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the common-law right to privacy. Gov't Code § 552.101. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. The submitted documents relate to an attempted sexual assault and contain information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. In most cases, the city would be allowed to withhold only this information. In this instance, however, the requestor knows the identity of the individuals involved as well as the information in question. Therefore, withholding only certain details of the incident from the requestor would not preserve the named individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates we determine that the city must withhold the submitted information in its entirety under section 552.101 of the Government Code. Because we base our ruling on section 552.101 of the Government Code, we need not address your arguments under section 552.108.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code

§ 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.*

§ 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lauren E. Kleine  
Assistant Attorney General  
Open Records Division

LEK/jev

Ref: ID# 209453

Enc. Submitted documents

c: Ms. Etta Kemper Anderson  
2005 6<sup>th</sup> Street  
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(w/o enclosures)